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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,171	09/13/2000	Christopher D. Barr	66688	7502

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EXAMINER
MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 01/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/661,171	BARR ET AL.	
	Examiner	Art Unit	
	Robert Madsen	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 September 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *19-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. The Amendment filed September 22, 2003 has been entered. Claims 19-30 remain pending in the application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latif (US 5161733) in view of Brizzi et al. (US 5277304) and Barnard (US 4081126) and Beckman (US 5341626) and Ringler (US 2874524) and Williamson (US 3073501) and Munson (US 422032) and Wasserman (US 3009621) and Moore (US 2936944) and Kryzanowski (US 3367552) and Frost (US 5181649) and Taylor (US 2011383).

4. Regarding claims 19,20, 22,23, Latif teaches automated forming and filling of a container, or carton, for shipping, display and consumer use (Abstract, Figures). The container is formed from an open-ended partially pre-glued and partially assembled carton (i.e. in a first phase, Column 4, line 43 to Column 5, line 2). Latif teaches the topside flaps (A1 and A2 in Figures) , the top, and top front are folded (B2 and B1 in Figures) to close the top, but the bottom is left open for filling the products (Column 5, lines 3-20, Figure 2b). The carton is filled by inserting a plurality of wrapped elongated products (e.g. cigarette packs which each comprise an elongated product and a sealed wrap) through the bottom of the carton by applying force, such that the opposed sealed

ends of the elongated wrapped products are all perpendicular to top of the carton in a front-to-back configuration (Column 5, lines 23-36, Column 7, lines 13-15). After filling the products, Latif teaches folding the bottom flaps (C1 and C2), folding the bottom front/back inward and fastening with glue (B4/B3 can alternatively be front/back in Column 6, lines 10-22).

5. Latif is silent in teaching two particular steps of forming the container: (1) simultaneously inserting the wrapped products utilizing a mandrel such that each product has one end adjacent to the top of the container so that the seal is readily accessible from the top of the container, (2) the wrapped products are inserted using a compressive force to one of the end walls of all the products to transmit the compressive force along the side walls to the other end walls in a direction extending along the longitudinal axis of the elongated food product and (3) attaching the top of the container to the front panel as recited in claim 19. Latif is further silent in teaching the container top is attached by a releasable attachment as recited in claim 20. Latif is also silent in teaching the wrapped elongated products comprise (1) a food product, (2) a flexible sheet overlying a tray (3) the tray shields the food product from compression loads, and (4) the tray that includes notches on two opposing sidewall that are adjacent to a line of weakness that extends from one notch two the other and across the bottom of the tray, and a curved recess in the upper edge of the wall to facilitate handling, as recited in claim 19. Latif is also silent in teaching the notches extend ¼ to ¾ of the wall as recited in claim 23, and are formed by die cutting the wall as recited in claim 22.

6. With respect to *simultaneously* inserting a plurality of wrapped products with a *mandrel* such that the products' end seal is readily accessible from the top of the carton, and using a compressive force to one of the end walls of all the products to transmit the compressive force along the side walls to the other end walls in a direction extending along the longitudinal axis of the elongated food product , Brizzi et al. are relied on as evidence of the conventionality of arranging the same type of wrapped elongated products like Latif (i.e. packs of cigarettes) in a front-to-back position in a container such that the seam of each pack is readily accessible through the top (Abstract, Figures 1 and 2). Barnard teaches wrapped elongated products similar to Latif and Brizzi et al. (i.e. cigarette packs) should be arranged with the end seal adjacent to the top of the container or carton because all of the wrapped elongated products are visible and accessible (Column 3, lines 9-23). Beckman teaches applying a compressive force *simultaneously* to one of the end walls of all of a group of elongated wrapped products (e.g. a cigarette pack) allows one to efficiently fill a carton with wrapped elongated products (Figure 1, Column 1, line 5 to Column 2, line 15 and Column 6, line 1-42). Ringler teaches *simultaneously* inserting multiple products into the bottom of a carton using a mandrel (Column 3, line 70 to Column 4, line 29).

7. Therefore, it would have been obvious to have the seal available when the container is opened since it would permit the products to be visible and accessible and one would have been substituting one method of loading wrapped elongated products into a container for another. It would have been further obvious in the container using a compressive force applied to one end of all the wrapped products since Beckman

teaches this as a method of efficiently filling a group of similar wrapped products into a carton and one would have been substituting one method of filling a container with wrapped elongated products for another for the same purpose. It would have been further obvious to utilize a mandrel since one would have been substituting one conventional method of simultaneously inserting an item into a container for another .

8. With respect to having a top front flap glued to the front panel, Williamson, like Latif, teaches a container with a reclosable flip top that is initially sealed with glue and then unsealed to use for dispensing. Williamson is relied on as evidence of the conventionality of having a top front flap glued, which comprises a releasable attachment as recited in claim 20,to the front panel for a container with a reclosable flip top (In Figures 4 and 2 see glue spots 41 and 42). Therefore, it would have been obvious to provide a top front flap glued to the front since one would have been substituting one top design for another for the same purpose: providing a top that is sealed after packaging and is unsealed to provide a reclosable flip top.

9. With respect to the recited tray structure, Munson teaches wrapped elongated products like Latif (i.e. cigarettes) utilizing a paperboard tray and an overwrap (a tubular cover) wherein the tray has slot with a V-shaped notch on each sidewall extending a substantial portion (i.e. the entire portion) of the sidewall and corresponding to a line of weakness on the bottom wall such that the tray and overwrap are used in concert to dispense the elongated products(Figures 1-4, Page 1, lines 8-80). Wasserman is relied on as evidence of alternatively providing notches extending ¼ to ¾ of the walls of a tray holding elongated products, as recited in claim 23, that are adjacent to a line of

weakness that extends from one notch two the other and across the bottom of the tray to enable dispensing (See Figure 4 item 16 in light of Figure 1, Column 1, line 63 to Column 2, line 30). Therefore, it would have been obvious to modify Latif and include a tray for the wrapped elongated products which included notches on the walls that are adjacent to a line of weakness that extends from one notch two the other and across the bottom of the tray since this was a notoriously old cigarette package design and Latif teaches a method of packing cigarette packages in cartons. One would have been substituting one elongated wrapped product package for another. It would have been further obvious to extend the notches¼ to ¾ of the walls, as recited in claim 23, since this one would further assist in dispensing the products from their wrapped condition.

10. With respect to having a *flexible* wrap encompassing elongated *food* products held within a tray wherein the tray is sufficiently strong, it was notoriously well known in the art that the methods of packaging cigarettes are shared with the methods of packaging food. Moore are relied on as evidence of the conventionality of substituting either food or cigarettes in paperboard trays having an overwrap wherein one access the cigarettes or food by sliding the tray from the overwrap. Moore also teaches that in these overwrap/tray designs it is preferred to have a transparent flexible overwrap so that one may view the items in the tray and even though the overwrap is flexible, Moore further teaches tray is strong enough to support the cigarettes or food products (Column 1, lines 15-70) . Krzynowski is relied on as further evidence of the conventionality of tubular dispensing packaging being interchangeable for either cigarettes, as taught by Latif, or elongated food products, such as bread sticks or candy (Column 1, lines 10-70,

Column 3, lines 18-28). Frost is relied on as further evidence of the conventionality of food products being packaged in an wrapped elongated tray, wherein cuts formed in two sidewalls is provided to facilitate folding of the tray for dispensing of the products so the consumer does not have to touch the food during consumption. Additionally, Frost further teaches using a flexible wrapper in combination with such a tray (Column 4, lines 13-21, Column 4, lines 31-47, Column 6, lines 28-36, Figures 2,3,9-12). Therefore, it would have been obvious to modify the method of packaging taught by Latif and include elongated food products held in a tray that was sealed by a flexible sheet wrap, since this tray/overwrap structure was well known for either cigarettes or food products and one would have been substituting one conventional elongated wrapped product for another

11. With respect to having a curved recess in a wall of the tray, Taylor is relied on as evidence of the conventionality of providing a curved recess on a wall of an elongated food tray to provide curved finger support cut out, or die cut as recited in claim 22, and prevent the consumer from touch the food (item 21 of Figure 1, Page 1, lines 23-36). Therefore it would have been obvious to further modify the elongated wrapped products to include a tray with a curved recess on a wall formed by a die cut because it provides finger support and prevents a consumer from contacting the contents of the tray.

12. Regarding claim 21, Latif teaches once assembled the top pivots around a score line 12 (see Figures, (Column 6, lines 23-39), which is a line of weakness.

13. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Latif (US 5161733) in view of Brizzi et al. (US 5277304) and Barnard (US 4081126) and Beckman (US 5341626) and Ringler (US 2874524) and Williamson (US 3073501) and Munson (US 422032) and Wasserman (US 3009621) and Moore (US 2936944) and Kryzanowski (US 3367552) and Frost (US 5181649) and Taylor (US 2011383).as applied to claim 23 above, further in view Pierce Jr. (US3400877).

14. Latif modified is silent in teaching the tray is formed by locking the corners together without requiring adhesive or manual assembly. Pierce is relied on as evidence of the conventionality of automatically assembling trays by locking corners without the use of glue (Column 1, line 10 to column 2, line 23, Figures 1-8). Thus, once it was known to make a tray using any conventional method of forming a tray, such as a glueless automated method, would have been an obvious matter choice.

15. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latif (US 5161733) in view of Brizzi et al. (US 5277304) and Barnard (US 4081126) and Beckman (US 5341626) and Ringler (US 2874524) and Williamson (US 3073501) and Munson (US 422032) and Wasserman (US 3009621) and Moore (US 2936944) and Kryzanowski (US 3367552) and Frost (US 5181649) and Taylor (US 2011383).further in view Pierce Jr. (US3400877), as applied to claim 24 above, further in view of Kingham et al. (US 4721622).

16. Regarding claims 25 and 26, although Latif modified teaches elongated bread products, Latif modified is silent in teaching a cream cheese component disposed within

a baked bread product. Kingham et al. is relied on as evidence of packaging a cream cheese component disposed within a baked bread product within a sealed wrapper and further packaged within an outer carton (Column 7, line 44 to Column 8, line 8, Example 1). Therefore it would have been obvious to include a cream cheese component disposed within a baked bread product since one would have been substituting one wrapped elongated food product for another packaged within an outer carton.

17. Claims 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latif (US 5161733) in view of Brizzi et al. (US 5277304) and Barnard (US 4081126) and Beckman (US 5341626) and Ringler (US 2874524) and Williamson (US 3073501) and Munson (US 422032) and Wasserman (US 3009621) and Moore (US 2936944) and Kryzanowski (US 3367552) and Frost (US 5181649) and Taylor (US 2011383) and Pierce Jr. (US3400877) and Kingham et al. (US 4721622) as applied to claims 25 and 26 above, further in view of Phillips Jr. (US 4738359)

18. Latif teaches any number of wrapped elongated products packaged in the carton. Kingham et al. teach wrapped elongated food product should be sized to fit into a person's hand (Column lines 5-30). Although Latif is silent in teaching any particular tray size, as recited in claim 27, any particular thickness as recited in claims 28 and 29, or a particular carton size recited in claim 30, the particular wrapped elongated product (e.g. cigarette pack) taught by Latif has a notoriously well known dimension.

19. Philips is relied on as evidence of the conventional cigarette pack, carton, and paperboard dimensions. Philips teaches it is well known in the art that cigarette packs

are 70-100 mm long (i.e. 2.76 in to 3.9 in) and standard cartons are 266-286 mm wide, 70-100 mm high and 40-50 mm deep, comprising 2 rows of 5 packs. Based on these carton dimensions and pack arrangement, it is apparent that the conventional pack width and depth is about 53.2-57.2 mm (2.1-2.25 in) and 20-25 mm (0.8-1.0 in), respectively. Phillips also teaches it is conventional to use paperboard with a thickness of 0.25-0.30 mm (0.01 to 0.012 inches) (Column 4, lines 13-44).

20. Therefore, it would have been obvious to include a tray size that has a length of 3.5-5.5 in, a width of 1-3 in and a depth of tray of 0.5-1.5 in as recited in claim 27, since Latif is configured for a conventional wrapped elongated products and these are conventional dimensions for a wrapped elongated product pack. Furthermore, to select any size that can be held in one's hand would have been obvious since Kingham et al. teach wrapped elongated food products should be sized to fit into a person's hand. To select any particular carton dimension, as recited in claim 30, would have been an obvious result effective variable of the number of wrapped products packaged in the carton, since Latif teaches any number can be inserted and the general dimensions of each pack is known. It would have been further obvious to select a paperboard thickness of 0.01-0.025 in for a thickness for both the carton and tray as recited in claim 28 since 0.010 to 0.012 in paperboard was a conventional carton material thickness. To select any thickness higher than 0.012 in would have been an obvious result effective variable of the weight of each product as well as the number of trays per carton since 0.012 in is sufficient for cartons holding 10 cigarette packs which would weigh significantly less than 10 cheese filled bakery products that fit in one's hand.

Response to Arguments

21. Applicant's arguments filed September 22, 2003 have been fully considered but they are not persuasive.

22. In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991). The claims relate to a method of forming and filling a container suitable for shipping. Latif teaches forming and filling a carton through the bottom end with wrapped elongated products (i.e. cigarettes). Brizzi et al. , Barnard , Beckman ,Ringler are relied on as evidence of a desired orientation and method for obtaining the desired orientation in a carton of the same wrapped elongated products (i.e. cigarettes). Williamson teaches a conventional method of sealing a top flap of carton. Munson teaches a conventional cigarette tray/overwrap package with a dispensing feature. Thus, the substitution for the tray/overwrap package of Munson for the generic cigarette package of Latif is a simple equivalent substitution of one cigarette package for another. Munson teaches a package to facilitate dispensing of an wrapped elongated product. The tray/overwrap of Munson differs from applicant's recited tray and overwrap by the following features (1) the extent of the notches on the side of the tray (extending down the full or portion of the side), (2) the type of overwrap (i.e. flexible), (3) curved recesses, and (4) food products. Features (1)-(3) are mere design features, which do not change the over all functionality

of the tray/overwrap of Munson. It was also well known in the art to utilize similar tray packaging for both food (i.e. feature (4)) and cigarettes.

23. In response to applicant's argument that there is no suggestion to further combine Wasserman with the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Munson teaches a full notch is used to fold back the end of tray to assist a person in accessing an elongated product held by the tray. Wasserman is relied on evidence that shorter notches serve an equivalent purpose (column 3 lines 30-46).

24. With respect to Taylor teaching the curves recited in the claims, Taylor is relied on as evidence of providing a holding means for tray used to dispense an elongated product. Munson teaches a tray, which as evidenced by the art of record can be used for food products, facilitates the dispensing of an elongated product. Taylor's feature would improve dispensing since it would give a consumer a location to place ones fingers, without touching the elongated product, a very important feature when the product is food.

Conclusion

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

26. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

28. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

29. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen
Examiner
Art Unit 1761

STEVE WEINSTEIN
PRIMARY EXAMINER 1761
12/15/03
for M.Cano